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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/032,746	10/23/2001	Doreen Lynn Galli	RSW920010198US1	5805

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IBM CORPORATION  
INTELLECTUAL PROPERTY LAW  
DEPT. IQOA/BLDG. 040-3  
1701 NORTH STREET  
ENDICOTT, NY 13760

EXAMINER

MCALLISTER, STEVEN B

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 12/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/032,746

Applicant(s)

GALLI, DOREEN LYNN 

Examiner

Steven B. McAllister

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 and 7-12 is/are pending in the application.
- 4a) Of the above claim(s) 7, 8, 10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☒ Claim(s) 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of Species III, claim 9 in the reply filed on 10/12/2004 is acknowledged.

Claims 7, 8 and 10 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 10/12/2004.

### ***Claim Objections***

Claims 1-5, 9, 11 and 12 are objected to because of the following informalities: it is not clear whether "quantity-held" refers to items physically removed from stock by the customers within the store, or on hold, layaway, etc. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tedesco et al (6,298,972) in view of Miyazaki (6,615,714).

Tedesco et al show receiving a request for an item by a shopper; identifying an item requested by a shopper; determining an approximate quantity available by reading

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an inventory record; adjusting the quantity by subtracting a quantity held estimate held by in-person shopper prior to check out, the quantity held estimate comprising the number of items held by subscribers who are in-person shoppers since they will pick the items up in person, but prior to check out; comparing the adjusted quantity with a first threshold – one; and when the adjusted quantity is less than zero, taking corrective action, comprising refusing the sale. Tedesco et al do not show the request for an item being received on line, or performing the inventory determining, adjusting and comparing steps via the remote server. Miyazaki shows receiving an online order for a vending machine. It would have been obvious to one of ordinary skill in the art to modify the method of Tedesco et al by providing for online sales as taught by Miyazaki in order to provide more purchase options for the buyer. As to performing the recited inventory tasks via a remote server, it is notoriously old and well known in the art to manipulate inventory for a vending via a remote server. It would have been obvious to one of ordinary skill in the art to further modify the method of Tedesco to do so in order to allow for centralized inventory monitoring and manipulation.

As to claim 2, Tedesco et al show all elements of the claim except that the quantity held estimate is dependent on a historical average. However, it is notoriously old and well known in the art to base such estimates on past activity. It would have been obvious to one of ordinary skill in the art to modify the method of Tedesco et al by basing the estimate on historical data in order to provide more accurate estimates.

As to claims 3 and 4, the quantity-held estimate is dependent upon the time of day and the day of the week, since subscribers will purchase items throughout the day and week, therefore changing the quantity held estimate.

As to claim 5, Tedesco et al show all elements except that the quantity held estimate is dependent on proximity to a holiday. However, it is notoriously old and well known in the art to vary purchase forecasts based on proximity to a holiday. It would have been obvious to one of ordinary skill in the art to do so in order to more accurately capture likely subscription redemption patterns.

### ***Response to Arguments***

Applicant's arguments filed 10/12/2004 have been fully considered but they are not persuasive.

Applicant argues that Miyazaki does not teach on-line shoppers. Miyazaki shows online ordering for the vending machine (e.g., col. 6, line 40 – col. 7, line 20). The combination of references shows both in person and online shoppers.

It is noted that the claims do not recite that the “held items” are physically removed from inventory by the customers. Such an additional recitation would define over the existing combination, and the examiner does not believe that additional teachings could remedy the deficiency in the combination since the basic context of Tedesco is that the items are held within the inventory of the machine.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. McAllister whose telephone number is (703) 308-7052. The examiner can normally be reached on M-Th 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert P. Olszewski can be reached on (703) 308-5183. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Steven B. McAllister

**STEVE B. McALLISTER**  
**PRIMARY EXAMINER**